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The humanity of human suffering

Senate Bill 447 allows courts to award damages for a deceased person's non-economic damages of pain, suffering, or disfigurement

By Jacqueline Serna
CAOC Deputy Legislative Director

When CAOC set off to change the archaic ban on pre-death pain and suffering damages in 2021, we knew we had a fight ahead of us. The law was older than MICRA, and we understood just how many plaintiffs had been hurt by the ban, which resulted in a windfall for defendants. But how do you explain "human suffering" to legislators who may never have experienced such harm? Well, you must let the stories speak for themselves.

One story we told was that of Diego Stolz. Diego was just 13 years old when he tragically lost his life due to bullying. On September 16, 2019, after months of being bullied, Diego was physically assaulted on campus by two students. Diego was sucker-punched in the face, fell backwards, and struck his head on a concrete pole. He suffered a massive brain injury, and nine days later he succumbed to his injuries.

Diego's death was entirely preventable. His death was a result of his school's indifference toward a bullying pandemic that was plaguing its campus. Despite repeated pleas for help by Diego's family, administrators at the school did absolutely nothing to protect Diego. Diego's death has been an unspeakable tragedy for his close-knit family. But California law did not allow his family to recover Diego's human suffering damages.

When I heard Diego's story, I thought of my own son (also named Diego). How would I feel to lose him this way? The pain was unimaginable. How could justice be served? One way was to fully ensure deterrence and restore equity to plaintiffs who are unable to survive until their trial. We needed to update California law to allow plaintiffs to preserve their human suffering damages, even if they pass away before trial or resolution of their case.

Looking into the legislative history, we found that the California Legislature enacted comprehensive laws on survival damages in 1961. At that point, the insurance industry lobbied to extinguish damages for human suffering when a plaintiff died. The Legislature then strongly favored preserving these damages, but buckled under industry pressure. Sixty years later, we had become one of only five states to prohibit these types of damages in a survival action. As a result, the law created a perverse incentive for defendants to delay cases and harass ill plaintiffs in the hopes that the plaintiff would die before trial. This allowed the wrongdoer to avoid paying any damages or restitution for the human suffering they had caused.

With the help of our friends at the Consumer Federation of California, we introduced Senate Bill 447 (Chapter 44, Statutes of 2021) by Senator John Laird, which allows courts to award damages for a deceased person's non-economic damages of pain, suffering, or disfigurement to the deceased person's personal representative or successor in interest in certain cases. Senator Laird was the perfect author. He knew what a heavy lift this bill would be, but he was not afraid of a fight.

With the help of CAOC member Laurel Halbany, we were able to show the need for this important bill. Laurel had ample experience standing up for asbestos-poisoning victims and was able to articulate the true impact of SB 447 to victims of negligence. Further, the COVID-19-caused court logjams and case delays only made matters worse. Victims needed justice.

California was an outlier in rewarding deadly negligence by allowing a victim's human suffering damages to die with them. SB 447 would finally change that.

Like with any important CAOC bill, we faced formidable foes. We were opposed by corporations, insurers, and the medical industry. After all, the old law allowed bad actors to get away with bad behavior, without ever paying a dime for the pain and suffering they caused. The opposition resorted to fearmongering about unscrupulous attorneys and out-of-control settlements if SB 447 passed. However, the legislators saw through the smoke and mirrors. In the end, we were successful in making our case that California law needed to change, and SB 447 was signed into law by Governor Newsom.

However, no law is ever perfect, and SB 447 includes some time limitations. First, it has a five-year sunset provision. This means that CAOC will have to introduce a new bill in 2025 to extend the law or make it permanent. Without subsequent legislation next year, SB 447 will expire on January 1, 2026. Second, for SB 447 to apply either: (a) the action or proceeding must have been granted a specified preference under CCP § 36 (preferential trial setting) before January 1, 2022; or (b) the action must be filed on or after January 1, 2022, and before January 1, 2026.

This means we need you to continue this fight with us. Along with reporting any judgment, consent judgment, or court-approved settlement agreement entitling the plaintiff to these damages to the Judicial Council as required by the law, we need to hear from you on how this law has positively impacted your clients since its passage. We cannot make this law permanent without these stories. The human element of "human suffering" is indispensable. Please contact me at at jserna@caoc.org with your examples.


Serna

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